

Introduced by Senator Alarcon

February 11, 2003

An act to add Sections 31000.10 and 37103.1 to the Government Code, relating to personal services contracting.

LEGISLATIVE COUNSEL'S DIGEST

SB 163, as introduced, Alarcon. Personal contracting services: counties and cities.

Existing law requires public entities to comply with certain procedures in soliciting and awarding public contracts. Existing law also authorizes public entities, under limited circumstances, to enter into a personal services contract.

This bill would authorize a county, city, or city and county to enter into a personal services contract, if the contract would achieve cost savings and if any of the following conditions are satisfied: (1) the contract would be for new functions that the Legislature mandates or authorizes be performed by independent contractors, (2) the services would not be available within the county, city, or county and city or cannot be satisfactorily performed by district employees, (3) the services would be incidental to a purchase or lease contract, (4) the policy, administrative, or legal goals and purposes of the county, city, or city and county could not be accomplished through the regular or ordinary hiring process, (5) the work would meet criteria for emergency appointment, (6) equipment, materials, facilities, or support services would be provided that could not feasibly be provided by the district, and (7) the services would be of an urgent, temporary, or occasional nature.

The bill would operate prospectively and would not apply to any existing personal services contracts.

This bill would require a county, city, or city and county to adopt new practices with respect to personal services contracting, and thereby would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement, including the creation of a State Mandates Claims Fund to pay the costs of mandates that do not exceed \$1,000,000 statewide and other procedures for claims whose statewide costs exceed \$1,000,000.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 31000.10 is added to the Government
2 Code, to read:

3 31000.10. (a) Notwithstanding any other provision of this
4 division, personal services contracting for all services currently or
5 customarily performed by county employees to achieve cost
6 savings is permissible, unless otherwise prohibited, when all the
7 following conditions are met:

8 (1) The county board of supervisors or the county clearly
9 demonstrates that the proposed contract will result in actual overall
10 cost savings to that county, provided that:

11 (A) In comparing costs, there shall be included the county's
12 additional cost of providing the same service as proposed by a
13 contractor. These additional costs shall include the salaries and
14 benefits of additional staff that would be needed and the cost of
15 additional space, equipment, and materials needed to perform the
16 function.

17 (B) In comparing costs, there may not be included the county's
18 indirect overhead costs, unless these costs can be attributed solely
19 to the function in question and would not exist if that function was
20 not performed by the county. Indirect overhead costs shall mean



1 the pro rata share of existing administrative salaries and benefits,
2 rent, equipment costs, utilities, and materials.

3 (C) In comparing costs, there shall be included in the cost of a
4 contractor providing a service any continuing county costs that
5 would be directly associated with the contracted function. These
6 continuing county costs shall include, but not be limited to, those
7 for inspection, supervision, and monitoring.

8 (2) Proposals to contract out work may not be approved solely
9 on the basis that savings will result from lower contractor pay rates
10 or benefits. Proposals to contract out work shall be eligible for
11 approval if the contractor's wages are at the industry's level and
12 do not undercut county pay rates.

13 (3) The contract does not cause the displacement of county
14 employees. The term "displacement" includes layoff, demotion,
15 involuntary transfer to a new classification, involuntary transfer to
16 a new location requiring a change of residence, and time base
17 reductions. Displacement does not include changes in shifts or
18 days off, nor does it include reassignment to other positions within
19 the same classification and general location or employment with
20 the contractor, so long as wages and benefits are comparable to
21 those paid by the county.

22 (4) The savings shall be large enough to ensure that they will
23 not be eliminated by private sector and county cost fluctuations
24 that could normally be expected during the contracting period.

25 (5) The amount of savings clearly justifies the size and duration
26 of the contracting agreement.

27 (6) The contract is awarded through a publicized, competitive
28 bidding process.

29 (7) The contract includes specific provisions pertaining to the
30 qualifications of the staff that will perform the work under the
31 contract, as well as assurances that the contractor's hiring practices
32 meet applicable nondiscrimination standards.

33 (8) The potential for future economic risk to the county from
34 potential contractor rate increases is minimal.

35 (9) The contract is with a firm. A "firm" means a corporation,
36 limited liability corporation, partnership, nonprofit organization,
37 or sole proprietorship.

38 (10) The potential economic advantage of contracting is not
39 outweighed by the public's interest in having a particular function
40 performed directly by the county.

1 (b) Notwithstanding any other provision of this chapter,
2 personal services contracting shall also be permissible when any
3 of the following conditions can be met:

4 (1) The contract is for new county functions and the Legislature
5 has specifically mandated or authorized the performance of the
6 work by independent contractors.

7 (2) The services contracted are not available within the county,
8 cannot be performed satisfactorily by county employees, or are of
9 such a highly specialized or technical nature that the necessary
10 expert knowledge, experience, and ability are not available
11 through the county.

12 (3) The services are incidental to a contract for the purchase or
13 lease of real or personal property. Contracts under this criterion,
14 known as “service agreements,” shall include, but not be limited
15 to, agreements to service or maintain office equipment or
16 computers that are leased or rented.

17 (4) The policy, administrative, or legal goals and purposes of
18 the county cannot be accomplished through the utilization of
19 persons selected pursuant to the regular or ordinary county hiring
20 process. Contracts are permissible under this criterion to protect
21 against a conflict of interest or to ensure independent and unbiased
22 findings in cases where there is a clear need for a different, outside
23 perspective. These contracts shall include, but not be limited to,
24 obtaining expert witnesses in litigation.

25 (5) The nature of the work is such that the criteria for
26 emergency appointments apply. “Emergency appointment”
27 means an appointment made for a period not to exceed 60 working
28 days either during an actual emergency to prevent the stoppage of
29 public business or because of the limited duration of the work. The
30 method of selection and the qualification standards for an
31 emergency employee shall be determined by the county. The
32 frequency of appointment, length of employment, and the
33 circumstances appropriate for the appointment of firms or
34 individuals under emergency appointments shall be restricted so
35 as to prevent the use of emergency appointments to circumvent the
36 regular or ordinary hiring process.

37 (6) The contractor will provide equipment, materials, facilities,
38 or support services that could not feasibly be provided by the
39 county in the location where the services are to be performed.



(7) The services are of such an urgent, temporary, or occasional nature that the delay incumbent in their implementation under the county's regular or ordinary hiring process would frustrate their very purpose.

(c) This section shall apply to all counties, including counties that have adopted a merit or civil service system.

(d) This section shall apply to personal service contracts entered into after January 1, 2004. This section does not apply to the renewal of personal services contracts subsequent to January 1, 2004, where the contract was entered into before January 1, 2004, irrespective of whether the contract is renewed or rebid with the existing contractor or with a new contractor.

SEC. 2. Section 37103.1 is added to the Government Code, to read:

37103.1. (a) Notwithstanding any other provision of this chapter, personal services contracting for all services currently or customarily performed by city employees to achieve cost savings is permissible, unless otherwise prohibited, when all the following conditions are met:

(1) The legislative body clearly demonstrates that the proposed contract will result in actual overall cost savings to that city, provided that:

(A) In comparing costs, there shall be included the city's additional cost of providing the same service as proposed by a contractor. These additional costs shall include the salaries and benefits of additional staff that would be needed and the cost of additional space, equipment, and materials needed to perform the function.

(B) In comparing costs, there may not be included the city's indirect overhead costs unless these costs can be attributed solely to the function in question and would not exist if that function was not performed by the city. Indirect overhead costs shall mean the pro rata share of existing administrative salaries and benefits, rent, equipment costs, utilities, and materials.

(C) In comparing costs, there shall be included in the cost of a contractor providing a service any continuing city costs that would be directly associated with the contracted function. These continuing city costs shall include, but not be limited to, those for inspection, supervision, and monitoring.

1 (2) Proposals to contract out work may not be approved solely
2 on the basis that savings will result from lower contractor pay rates
3 or benefits. Proposals to contract out work shall be eligible for
4 approval if the contractor's wages are at the industry's level and
5 do not undercut city pay rates.

6 (3) The contract does not cause the displacement of city
7 employees. The term "displacement" includes layoff, demotion,
8 involuntary transfer to a new classification, involuntary transfer to
9 a new location requiring a change of residence, and time base
10 reductions. Displacement does not include changes in shifts or
11 days off, nor does it include reassignment to other positions within
12 the same classification and general location or employment with
13 the contractor, so long as wages and benefits are comparable to
14 those paid by the city.

15 (4) The savings shall be large enough to ensure that they will
16 not be eliminated by private sector and city cost fluctuations that
17 could normally be expected during the contracting period.

18 (5) The amount of savings clearly justifies the size and duration
19 of the contracting agreement.

20 (6) The contract is awarded through a publicized, competitive
21 bidding process.

22 (7) The contract includes specific provisions pertaining to the
23 qualifications of the staff that will perform the work under the
24 contract, as well as assurances that the contractor's hiring practices
25 meet applicable nondiscrimination standards.

26 (8) The potential for future economic risk to the city from
27 potential contractor rate increases is minimal.

28 (9) The contract is with a firm. A "firm" means a corporation,
29 limited liability corporation, partnership, nonprofit organization,
30 or sole proprietorship.

31 (10) The potential economic advantage of contracting is not
32 outweighed by the public's interest in having a particular function
33 performed directly by the city.

34 (b) Notwithstanding any other provision of this chapter,
35 personal services contracting shall also be permissible when any
36 of the following conditions can be met:

37 (1) The contract is for new city functions and the Legislature
38 has specifically mandated or authorized the performance of the
39 work by independent contractors.

1 (2) The services contracted are not available within the city,
2 cannot be performed satisfactorily by city employees, or are of
3 such a highly specialized or technical nature that the necessary
4 expert knowledge, experience, and ability are not available
5 through the city.

6 (3) The services are incidental to a contract for the purchase or
7 lease of real or personal property. Contracts under this criterion,
8 known as “service agreements,” shall include, but not be limited
9 to, agreements to service or maintain office equipment or
10 computers that are leased or rented.

11 (4) The policy, administrative, or legal goals and purposes of
12 the city cannot be accomplished through the utilization of persons
13 selected pursuant to the regular or ordinary city hiring process.
14 Contracts are permissible under this criterion to protect against a
15 conflict of interest or to ensure independent and unbiased findings
16 in cases where there is a clear need for a different, outside
17 perspective. These contracts shall include, but not be limited to,
18 obtaining expert witnesses in litigation.

19 (5) The nature of the work is such that the criteria for
20 emergency appointments apply. “Emergency appointment”
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23 public business or because of the limited duration of the work. The
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26 frequency of appointment, length of employment, and the
27 circumstances appropriate for the appointment of firms or
28 individuals under emergency appointments shall be restricted so
29 as to prevent the use of emergency appointments to circumvent the
30 regular or ordinary hiring process.

31 (6) The contractor will provide equipment, materials, facilities,
32 or support services that could not feasibly be provided by the city
33 in the location where the services are to be performed.

34 (7) The services are of such an urgent, temporary, or occasional
35 nature that the delay incumbent in their implementation under the
36 city’s regular or ordinary hiring process would frustrate their very
37 purpose.

38 (c) This section shall apply to all cities, including cities that
39 have adopted a merit or civil service system.

1 (d) This section shall apply to personal service contracts
2 entered into after January 1, 2004. This section does not apply to
3 the renewal of personal services contracts subsequent to January
4 1, 2004, where the contract was entered into before January 1,
5 2004, irrespective of whether the contract is renewed or rebid with
6 the existing contractor or with a new contractor.

7 SEC. 3. Notwithstanding Section 17610 of the Government
8 Code, if the Commission on State Mandates determines that this
9 act contains costs mandated by the state, reimbursement to local
10 agencies and school districts for those costs shall be made pursuant
11 to Part 7 (commencing with Section 17500) of Division 4 of Title
12 2 of the Government Code. If the statewide cost of the claim for
13 reimbursement does not exceed one million dollars (\$1,000,000),
14 reimbursement shall be made from the State Mandates Claims
15 Fund.

